



Chapter 7

Reference to Court of Appeal on Petition for Mercy

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Chapter Overview

This Chapter has only one section and deals with the process that the Attorney-General may follow when a person petitions the Attorney-General for mercy after they have been convicted on indictment, or found not guilty by reason of mental impairment.

327 Reference by Attorney-General

Overview

Section 327 allows the Attorney-General, on receipt of a petition of mercy, to either:

- refer the whole case to the Court of Appeal, in which case the Court of Appeal hears and determines the case as if it was an appeal against conviction or
- refer a question about the petition to the Supreme Court Trial Division which provides an advisory opinion to the Attorney on the question.

Legislative History

This section is based on section 584 of the [Crimes Act 1958](#). The drafting has been modernised but the substance of the section has not been changed.

Relevant Rules/Regulations/Forms

For reference on a petition of mercy, see rule 2.26 of the [Supreme Court \(Criminal Procedure\) Rules 2008](#).

Discussion

The procedures in this section support the process of petitioning the Attorney-General for mercy. The result of such a successful petition can be that the person is pardoned. This section does not change the substance of the previous law and existing principles will continue to apply.

The process in section 327(1)(a) and (2) allows the whole case to be referred to the Court of Appeal. The case then proceeds as an appeal against conviction. For a recent discussion of the relevant principles on such appeals see [Re GAM \[2005\] VSCA 234](#).

The process in section 327(1)(b) and (3) is different. Rather than hearing the whole case, the Supreme Court Trial Division (or three judges of that Division) is asked for an opinion on a question by the Attorney-General. The opinion is non-binding (see *Attorney-General's Reference (No 1 of 1983)* [1983] 2 VR 410). The Attorney-General will then consider whether to exercise the prerogative of mercy and pardon the petitioner. It should be noted that a pardon in this context only extinguishes the consequences of a conviction (i.e. the sentence), but not the conviction itself. In order to remove a conviction following a pardon, an application for leave to appeal against conviction needs to be taken, including an application for leave to appeal out of time.

The notes refer to relevant provisions of general application in Chapter 8 as well as the relevant transitional provisions in Clause 11 of Schedule 4 to the Act.